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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Easton Murray,
10 Claudius Murray

11 Plaintiffs,

12 v.

13 State of Arizona, et al.,

14 Defendants.
15

No. CV-22-00360-TUC-RM

Consolidated with: CV-22-00361-TUC-RM

ORDER

16 Plaintiffs Easton and Claudius Murray filed this now-consolidated civil rights
17 action on August 15, 2022. (Doc. 1 in CV-22-360 and CV-22-361.)¹ Prior to the
18 consolidation of CV-22-360 and CV-22-361, Defendants Pima County, former Pima
19 County Attorney Barbara LaWall (“LaWall”), the Pima County Attorney’s Office, and
20 Deputy County Attorney Chris Ward (“Ward”) (collectively, “County Defendants”) filed
21 a Motion to Dismiss and a Motion to Substitute Party in each case. (Docs. 13, 14 in CV-
22 22-360 and CV-22-361.) The Court granted the Motion to Substitute Party in CV-22-360
23 (Doc. 17), and Plaintiff Easton Murray filed a Motion for Reconsideration (Doc. 21). As
24 of the date of consolidation, County Defendants’ Motions to Dismiss remained pending
25 in each case, the Motion to Substitute remained pending in CV-22-361, and the Motion
26 for Reconsideration remained pending in CV-22-360.² The Court resolves below the

27 ¹ All record citations refer to the docket and page numbers generated by the Court’s
28 electronic filing system and, unless otherwise noted, refer to the docket in CV-22-360.

² Motions to Dismiss filed by Defendants State of Arizona, Assistant Attorney General Amy Thorson, and retired Criminal Appellate Section Chief Counsel Joseph Maziarz also

1 Motion to Substitute and Motion for Reconsideration. The Motions to Dismiss will be
2 resolved separately.³

3 I. Legal Standard

4 “The Court will ordinarily deny a motion for reconsideration of an Order absent a
5 showing of manifest error or a showing of new facts or legal authority that could not have
6 been brought to its attention earlier with reasonable diligence.” LRCiv 7.2(g); *see also*
7 *School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)
8 (a motion for reconsideration is appropriate where the district court “(1) is presented with
9 newly discovered evidence, (2) committed clear error or the initial decision was
10 manifestly unjust, or (3) if there is an intervening change in controlling law.”) Whether
11 to grant reconsideration is within the sound discretion of the trial court. *Navajo Nation v.*
12 *Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th
13 Cir. 2003).

14 If a party sued in an official capacity resigns “or otherwise ceases to hold office
15 while the action is pending, . . . [t]he officer’s successor is automatically substituted as a
16 party.” Fed. R. Civ. P. 25(d). All later proceedings “should be in the substituted party’s
17 name, but any misnomer not affecting the parties’ substantial rights must be disregarded.”
18 *Id.*

19 “[O]fficial-capacity suits generally represent only another way of pleading an
20 action against an entity of which an officer is an agent.” *Hafer v. Melo*, 502 U.S. 21, 25
21 (1991) (internal quotation marks omitted). “Because the real party in interest in an
22 official-capacity suit is the governmental entity and not the named official, the entity’s
23 policy or custom must have played a part in the violation of federal law” and “the only
24 immunities available” to an official-capacity defendant “are those that the governmental
25 entity possesses.” *Id.* (internal quotation marks omitted). On the other hand, individual-

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27 remained pending in each case as of the date of consolidation. (Doc. 22 in CV-22-360
and CV-22-361.)

28 ³ The Court will deny County Defendants’ request (Doc. 34) to defer ruling on the
Motion for Reconsideration.

1 capacity suits “seek to impose individual liability upon a government officer for actions
 2 taken under color of law.” *Id.* The plaintiff “need not establish a connection to
 3 governmental policy or custom,” and the official sued “may assert personal immunity
 4 defenses such as objectively reasonable reliance on existing law.” *Id.*

5 **II. Discussion**

6 In the pending Motion to Substitute Party in CV-22-361, County Defendants ask
 7 the Court to substitute as a defendant current Pima County Attorney Laura Conover
 8 (“Conover”) in place of LaWall. (Doc. 14 in CV-22-361.) County Defendants argue that
 9 substitution is proper pursuant to Federal Rule of Civil Procedure 25(d) because “Barbara
 10 LaWall was sued in her official capacity as the former Pima County Attorney and
 11 Plaintiff’s allegations against Ms. LaWall all involve official-capacity acts as the head
 12 prosecutor in Pima County.” (*Id.* at 3.) In opposition, Plaintiff Claudius Murray argues
 13 that the Complaint makes clear that all defendants are sued in both their official and
 14 individual capacities, and the claims against LaWall involve her own “actions and
 15 conduct” rather than those “of the office of the county attorney.” (Doc. 16 in CV-22-
 16 361.) In reply, County Defendants argue that LaWall was sued in her official capacity—
 17 and therefore substitution is automatic under Rule 25(d)—because the Complaint
 18 repeatedly references LaWall’s status as an elected official. (Doc. 17 in CV-22-361.)

19 The parties filed substantively identical briefs in CV-22-360 (Docs. 14, 15, 16),
 20 and the Court granted the Motion to Substitute, finding in a footnote that Plaintiff’s
 21 claims against LaWall “strictly involve duties performed in an official capacity” (Doc. 17
 22 at 1 n.1). In the Motion for Reconsideration filed in CV-22-360, Plaintiff Easton Murray
 23 argues that this Court erred in substituting Conover for LaWall under Rule 25(d) for two
 24 reasons: (1) Rule 25(d) is inapplicable because this action was filed after LaWall vacated
 25 office as the Pima County Attorney; and (2) Plaintiff sued LaWall for monetary damages
 26 in her individual capacity. (Doc. 21.) In response, County Defendants argue that
 27 Plaintiff’s official-capacity claims proceed against Conover pursuant to Rule 25(d), even
 28 if this action was filed after LaWall left office, as any misnomer not affecting the parties’

1 substantial rights must be disregarded. (Doc. 34.) County Defendants also ask the Court
2 to defer ruling on Plaintiff's Motion for Reconsideration to the extent the Court has any
3 doubts regarding whether Plaintiff sued LaWall in her individual capacity, as the Court's
4 resolution of County Defendants' pending Motion to Dismiss may moot the issue. (*Id.* at
5 3.)

6 Because Rule 25(d) specifies that misnomers not affecting parties' substantial
7 rights "must be disregarded," substitution of Conover for LaWall with respect to
8 Plaintiffs' official-capacity claims is appropriate even though this action was filed after
9 LaWall ceased to hold the office of Pima County Attorney. Accordingly, the Court will
10 deny Plaintiff Easton Murray's Motion for Reconsideration to the extent it argues that
11 substitution of Conover for LaWall was inappropriate with respect to the official-capacity
12 claims. The Court will also grant the Motion to Substitute Party pending in CV-22-361
13 with respect to Plaintiff Claudius Murray's official-capacity claims against LaWall.

14 The Court will reconsider its Order granting County Defendants' Motion to
15 Substitute in CV-22-360 to the extent the Order dismissed LaWall entirely as a defendant
16 in that case. Substitution of Conover for LaWall is not permitted under Rule 25(d) with
17 respect to claims asserted against LaWall in her individual capacity, and the Court erred
18 in finding that Plaintiffs assert only official-capacity claims against LaWall. Plaintiffs
19 specify in their Complaints that LaWall is sued in both her individual and official
20 capacities, and Plaintiffs seek money damages from LaWall based on actions she
21 purportedly took under color of state law. (Doc. 1 in CV-22-360 and CV-22-361.)⁴ For
22 example, Plaintiffs assert that LaWall decided not to test or investigate evidence and
23 decided to offer an individual named Carr immunity and assistance in securing a delay in
24 deportation proceedings. (Doc. 1 at 4, 7.) Plaintiffs also allege that LaWall conspired
25 with Defendant Ward to violate Plaintiffs' civil rights. (*Id.* at 7, 12.) In County
26 Defendants' pending Motions to Dismiss, LaWall asserts personal immunity defenses—
27 including absolute prosecutorial immunity and qualified immunity—that are only

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⁴ The Complaints in CV-22-360 and CV-22-361 are substantively identical.

1 available with respect to individual-capacity claims. (Doc. 13 in CV-22-360 and CV-22-
 2 361.) In arguing that substitution is proper under Rule 25(d), Defendants point out that
 3 Plaintiffs' Complaints alleges acts taken in LaWall's capacity as the Pima County
 4 Attorney. (Docs. 14, 16 in CV-22-360; Docs. 14, 17 in CV-22-361.) However,
 5 individual-capacity claims under 42 U.S.C. § 1983 must allege actions taken under color
 6 of state law; the fact that the Complaints allege actions taken in LaWall's capacity as
 7 Pima County Attorney does not mean the Complaints allege only official-capacity claims.

8 Accordingly, the Court will partially grant Plaintiff Easton Murray's Motion for
 9 Reconsideration in CV-22-360 and will reinstate LaWall as a defendant with respect to
 10 Easton Murray's individual-capacity claims. The Court will grant County Defendants'
 11 Motion to Substitute in CV-22-361 with respect to Plaintiff Claudius Murray's official-
 12 capacity claims but will deny the Motion to Substitute with respect to the individual-
 13 capacity claims.

14 **III. Pending Motions to Dismiss**

15 The Motions to Dismiss pending in CV-22-361 are substantively identical to those
 16 pending in CV-22-360. Because CV-22-360 and CV-22-361 have been consolidated, the
 17 Court will resolve the Motions to Dismiss in CV-22-360 and will direct the Clerk of
 18 Court to term the Motions in CV-22-361.

19 **IT IS ORDERED** that the County Defendants' Motion to Defer Ruling (Doc. 34
 20 in CV-22-360) is **denied**.

21 **IT IS FURTHER ORDERED** that Plaintiff Easton Murray's Motion for
 22 Reconsideration (Doc. 21 in CV-22-360) is **partially granted and partially denied**.
 23 Barbara LaWall is reinstated as a defendant with respect to Plaintiff Easton Murray's
 24 individual-capacity claims against her. The Motion for Reconsideration is otherwise
 25 denied.

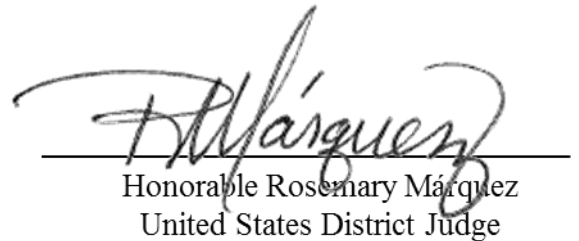
26 **IT IS FURTHER ORDERED** that County Defendants' Motion to Substitute
 27 Party (Doc. 14 in CV-22-361) is **partially granted and partially denied**. Laura
 28 Conover is substituted as a defendant in place of Barbara LaWall with respect to Plaintiff

1 Claudius Murray's official-capacity claims against LaWall. However, the Motion to
2 Substitute is denied with respect to Plaintiff Claudius Murray's individual-capacity
3 claims against LaWall.

4 **IT IS FURTHER ORDERED** that the Clerk of Court shall term the pending
5 Motions to Dismiss in CV-22-361 (Docs. 13 and 22 in CV-22-361), as those Motions will
6 be resolved in CV-22-360 now that the actions have been consolidated. The Clerk of
7 Court is directed to close CV-22-361.

8 Dated this 4th day of April, 2023.

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Honorable Rosemary Márquez
United States District Judge